

Appl. No. 10/762,746

Amdt. dated Mar. 22, 2005

Reply to Office action of Dec. 22, 2004

### REMARKS

Claims 21-40 are pending in the present application.

Claims 21, 30-33, 34 and 37-40 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims of U.S. Patent No. 6,714,559.

Claims 21-22, 32-34 and 39 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims of U.S. Patent No. 5,673,031.

Claims 21-22, 25, 31-34 and 38-40 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 5,164,942 to Kamerman et al. (*Kamerman*).

Claims 21-22, 25, 27-29, 31-34, 36 and 38-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kamerman* in view of common techniques in the art at the time of the invention.

Claims 23, 24 and 35 stand objected to for unknown reasons.

The disclosure stands objected to because of informalities.

For at least the reasons stated below, Applicant respectfully traverses the above rejections.

### Objections

Turning first to the objection to the disclosure, Applicant respectfully traverses this objection. The Office Action objects to the disclosure, stating that the status indications of the applications mentioned in paragraphs 1-7 and 35 need to be updated. Paragraphs 1-7 and 35, as currently amended, include updated application status indications and are therefore in the proper format.

### Rejections Under Obviousness-type Double Patenting

Turning next to the rejection of claims 21, 30-33, 34 and 37-40 under the judicially created doctrine of obviousness-type double patenting over various claims of U.S. Patent No. 6,714,559, Applicant respectfully traverses this rejection. In particular, Applicant disagrees with the statements in the Office Action concerning the relative scope of various pending claims in comparison to claims of the 6,714,559 patent. Nevertheless, Applicant is submitting a Terminal Disclaimer in compliance with 37 C.F.R. 1.321(c), disclaiming the

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terminal part of this application that extends beyond the expiration date of commonly owned U.S. Patent No. 6,714,559, to obviate the double patenting rejection. Applicant respectfully submits that the obviousness-type double patenting rejection is overcome.

Turning next to the rejection of claims 21-22, 32-34 and 39 under the judicially created doctrine of obviousness-type double patenting over various claims of U.S. Patent No. 5,673,031, Applicant respectfully traverses this rejection. In particular, Applicant disagrees with the statements in the Office Action concerning the relative scope of various pending claims in comparison to claims of the 5,673,031 patent. Nevertheless, Applicant is submitting a Terminal Disclaimer in compliance with 37 C.F.R. 1.321(c), disclaiming the terminal part of this application that extends beyond the expiration date of commonly owned U.S. Patent No. 5,673,031, to obviate the double patenting rejection. Applicant respectfully submits that the obviousness-type double patenting rejection is overcome.

#### **Rejections Under 35 U.S.C. § 102(e)**

Turning next to the rejection of claims 21-22, 25, 31-34 and 38-40 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 5,164,942 to Kamerman et al. (*Kamerman*), Applicant respectfully traverses this rejection.

With regard to the anticipation rejections, MPEP § 2131 states that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP 2131 also states that “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Independent claim 21, as currently amended, requires “waiting, by the sending device, a period of time that is at least as long as a first predetermined time period and detecting no communication on the wireless communication channel during the period of time.”

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Referring to *Kamerman*, the Office Action states, at ¶ 1, "When no activity has been detected during the first time period, the sending device attempts to initiate communication, col. 4, lines 57+."

*Kamerman*, at col. 4, lines 42-44, states "It should be understood that the LAN controller 22 operates according to the CSMA/CD aforementioned IEEE 802.3 standard." *Kamerman*, at col. 4, lines 46-50, then proceeds to explain operation of the controller in accordance with the CSMA/CD standard as background information. The IEEE 802.3 Ethernet standard is a standard for a 1-persistent CSMA/CD LAN. As such, the controller monitors the communication link. When the link becomes open, the controller begins transmitting with a probability of 1. As *Kamerman* states, the controller may wait an interframe spacing time before transmitting, but there is no indication that *Kamerman* is suggesting monitoring link traffic during the wait. In fact, such behavior is not in accordance with IEEE 802.3 operation, which *Kamerman* is attempting to explain in the cited section.

In fact, *Kamerman* explicitly states, in col. 4, lines 54-59, "After the carrier signal goes inactive, the controller continues to defer for an interframe spacing time configurable to a certain number of clock cycles. If at the end of the time it has a frame waiting to be transmitted, transmission is initiated independently of the sensed carrier" (emphasis added). Therefore, *Kamerman* does not teach nor suggest "detecting no communication on the wireless communication channel during the period of time."

Accordingly, based at least on the foregoing, Applicant respectfully submits that claim 21 is allowable over *Kamerman*, as are all claims that depend from claim 21, including claims 22-33.

Independent claim 34, as currently amended, requires "waiting, by the sending device, a period of time that is at least as long as a predetermined time period and detecting no communication on the wireless communication channel during the period of time." For at least the reasons discussed above with respect to claim 21, Applicant respectfully submits that claim 34 is also allowable over *Kamerman*, as are all claims that depend from claim 34, including claims 35-38.

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Regarding Independent claim 39, the Office Action does not appear to discuss the limitations of claim 39 anywhere, and thus, Applicant is unsure how to respond to the rejection of claim 39 under 35 U.S.C. § 102 over *Kamerman*.

Applicant submits that claim 39 is allowable over *Kamerman*. For example and without limitation, claim 39 requires, "determining whether communication is being performed from a first device of the plurality of devices to another device of the plurality of devices, the communication being performed on a communication channel within the wireless communication network; and initiating communication between the first device and a second device of the plurality of devices after determining that no communication is being performed." *Kamerman* provides no such teaching. Accordingly, for at least this reason, Applicant respectfully submits that independent claim 39 is allowable over *Kamerman*, as are all claims that depend from claim 39, including claim 40.

#### **Rejections Under 35 U.S.C. § 103(a)**

Turning next to the rejection of claims 21-22, 25, 27-29, 31-34, 36 and 38-40 under 35 U.S.C. § 103(a) as being unpatentable over *Kamerman* in view of common techniques in the art at the time of the invention, Applicant respectfully traverses this rejection.

MPEP § 2142 states that in order for a *prima facie* case of obviousness to be established, three basic criteria must be met, one of which is that the reference or combination of references must teach or suggest all of the claim limitations. MPEP § 2143.03 states that to establish a *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Independent claim 21, as currently amended, requires "waiting, by the sending device, a period of time that is at least as long as a first predetermined time period and detecting no communication on the wireless communication channel during the period of time." Also, independent claim 34, as currently amended, requires "waiting, by the sending device, a period of time that is at least as long as a predetermined time period and detecting no communication on the wireless communication channel during the period of time." As discussed previously, *Kamerman* does not teach at least the above limitations.

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The Office Action, on page 5, appears to state that incorporating the use of ACK messages, as may be used in an Ethernet system, into the *Kamerman* system renders the claimed invention obvious. For example, the Office Action states, "It is also well held that if the sending station does not receive these ACK packets within a second time period it schedules to resend the 'assumed' lost packet. Therefore, the use of ACK signals in 802.3 Ethernet also reads on the claimed limitation."

Applicant respectfully submits that incorporating the use of ACK messages into *Kamerman's* system does not cure the previously discussed deficiencies with regard to *Kamerman's* system. For example and without limitation, the use of ACK messages does not teach "waiting, by the sending device, a period of time that is at least as long as a first predetermined time period and detecting no communication on the wireless communication channel during the period of time," as required in claim 21, as currently amended. Nor does the use of ACK messages teach "waiting, by the sending device, a period of time that is at least as long as a predetermined time period and detecting no communication on the wireless communication channel during the period of time," as required in claim 34, as currently amended. Accordingly, based at least on the foregoing, and according to the requirements of MPEP §§ 2142 and 2143.03, the Office Action has not presented a *prima facie* case of obviousness with regard to claims 21 and 34.

For at least these reasons, Applicant submits that claims 21 and 34, and all claims depending therefrom, including claims 22-33 and 35-38, are allowable.

Because incorporating the use of ACK messages into *Kamerman's* system does not cure the previously discussed deficiencies with regard to *Kamerman's* system, Applicant will not presently address whether incorporating the use of ACK messages into *Kamerman's* system is a proper combination under 35 U.S.C. § 103. Applicant expressly reserves the right to challenge such assertion in the future if the need arises.

Regarding Independent claim 39, the Office Action does not appear to discuss the limitations of claim 39 anywhere, and thus, Applicant is unsure how to respond to the rejection of claim 39 under 35 U.S.C. § 103(a) over *Kamerman* in view of common techniques in the art.

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Applicant submits that claim 39 is allowable over *Kamerman* in view of common techniques in the art. For example, and without limitation, claim 39 requires, "determining whether communication is being performed from a first device of the plurality of devices to another device of the plurality of devices, the communication being performed on a communication channel within the wireless communication network; and initiating communication between the first device and a second device of the plurality of devices after determining that no communication is being performed." As discussed previously, *Kamerman* provides no such teaching. Additionally, common techniques in the art fail to cure *Kamerman's* deficiency. Accordingly, based at least on the foregoing, and according to the requirements of MPEP §§ 2142 and 2143.03, the Office Action has not presented a *prima facie* case of obviousness with regard to claim 39.

For at least these reasons, Applicant submits that independent claim 39 is allowable over *Kamerman* in view of common techniques in the art, as are all claims that depend from claim 39, including claim 40.

#### Summary

Based on at least the foregoing, Applicant believes that claims 21-40 are in condition for allowance. Accordingly, Applicant courteously solicits a Notice of Allowability with respect to all pending claims. If the Examiner disagrees or has question regarding this submission, Applicant respectfully requests that the Examiner telephone the undersigned at 312-775-8000.

FROM McANDREWS, HELD, & MALLOY


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The Commissioner is hereby authorized to charge additional fee(s) or credit overpayment(s) to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: March 22, 2005

Respectfully submitted,

  
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